

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0104, State of New Hampshire v. Brian R. Chevalier, the court on March 23, 2006, issued the following order:

Following a jury trial, the defendant, Brian R. Chevalier, was convicted of kidnapping. On appeal, he contends that the trial court erred when it denied his request to preserve a copy of the hard drive of the victim's computer to determine whether it contained exculpatory evidence. We affirm.

We review the trial court's decisions on the management of discovery under an unsustainable exercise of discretion standard. See State v. Ainsworth, 151 N.H. 691, 694 (2005). The defendant cites no constitutional provision in support of his argument; we therefore confine our analysis to the discretionary standard. To prevail on his claim of error, the defendant must demonstrate that the trial court's ruling was clearly untenable or unreasonable to the prejudice of his case. Id.

The defendant was charged with several offenses, including several counts of sexual assault. He argues that because the victim had reported that he forced her to engage in sexual bondage and he asserted a defense of consent, whether the victim's computer contained materials evidencing an interest in sexual bondage was relevant to the case. Specifically, he contends that evidence of her past interest "would serve to explain the otherwise counterintuitive defense that she would consent, not only to sex, but also to being confined for an extended period of time."

Evidence is relevant if it has "any tendency to make the existence of a fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.H.R. Ev. 401. Even if we assume that the victim's computer might have contained materials related to sexual bondage, their presence was irrelevant to whether the victim consented to engage in this activity with the defendant on the night in question. See State v. Higgins, 149 N.H. 290, 297 (2003) (each decision to consent is a new act, a

choice made on the circumstances prevailing at the time and not governed by the past). Accordingly, we find no error in the trial court's ruling.

Affirmed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**